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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/508,981	09/24/2004	Gerhard Mock	04-439	1111
34704	7590	02/01/2006	EXAMINER	
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/508,981

Applicant(s)

MOCK, GERHARD

Examiner

Luan K. Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Drawings***

1. The drawings were received on 12/14/2005. These drawings are not approved for entry because Applicant is agreed to remove the lines indicate by the numerals 58 and the numerals 58 but Applicant only removed the numerals 58.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

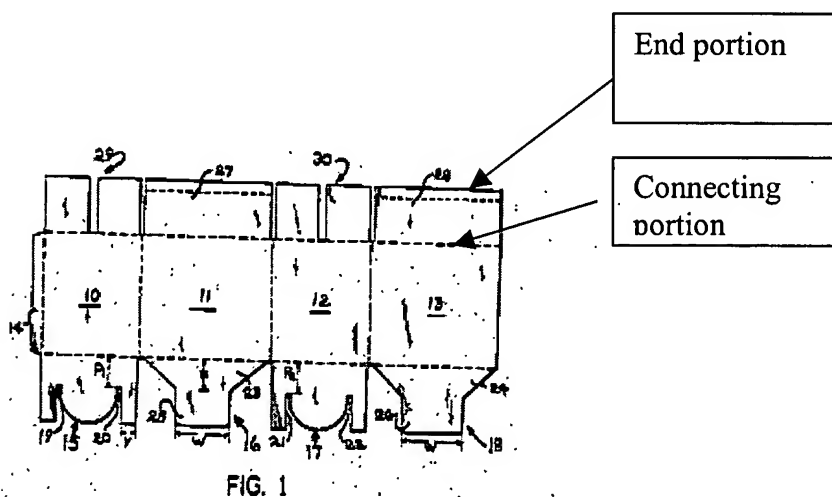
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20, 28 and 31 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Perry (3,272,421). Perry discloses a receptacle comprising a plurality of wall elements (10-18, 27-30) defining an internal space, a first wall element (11) having a first connecting portion and a first end portion and the second wall element (13) having a second connecting portion and a second end portion. The first end portion is bent over toward the second connecting portion and the second end portion is bent over toward the first connecting portion so the first and second connecting portions define with the bent over first and second end portions a gap (Figure 6) having a closed bottom (the flaps 27-30 formed the bottom of the receptacle instead of the top of the receptacle as defined by Perry) formed by the bent over first and second end portions and the first and second end portions within the internal space. The container of Perry is inherently capable for holding at least one pencil. As to claim 31, Perry discloses an opening defined by the

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two flaps (29, 30) for temporarily holding the end portions (Figure 6) together or a tab (14) which is considered equivalent to at least one latching device.



4. Claims 20, 28 and 31 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson (557,371). Ferguson discloses a receptacle comprising a plurality of wall elements (1-5, 21, 22) defining an internal space, a first wall element (1) having a first connecting portion and a first end portion (21) and the second wall element (3) having a second connecting portion and a second end portion (21). The first end portion is bent over toward the second connecting portion and the second end portion is bent over toward the first connecting portion so the first and second connecting portions define with the bent over first and second end portions a gap (Figure II) having a closed bottom formed by the bent over first and second end portions and the first and second end portions within the internal space. The container of Ferguson is inherently capable for holding at least one pencil (Figures I-VII). As to claim 31, Ferguson discloses a slot (19)

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defined by the two flaps (22) for temporarily holding the end portions together which is considered equivalent to at least one latching device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23-27 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson (557,371) in view of Sisk (5,893,458). Ferguson discloses the receptacle as above having all the limitations of the claims except for the wall elements being formed from of a plastic or foil. Sisk teaches a blank (10') for forming a receptacle (10) formed from a paperboard or plastic sheet (column 4, line 39). It would have been obvious to one having ordinary skill in the art in view of Sisk to modify the wall elements of Ferguson so the wall elements formed of a plastic for better protecting the contents. It would also have been obvious to one having ordinary skill in the art in view of Ferguson as modified to construct the wall elements formed of a foil since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

*In re Leshin*, 125 USPQ 416.

As to claim 24, the selection of the specific method for forming the receptacle such as deep drawing or others would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that

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using these specific method as claimed solves any particular problem or yields any unexpected results.

As to claim 25, with respect to the thickness of the wall elements, it would have been obvious to one having ordinary skill in the art in view of Ferguson as modified to construct the wall elements with the thickness as claimed because the selection of the specific thickness would appear to have been an obvious matter of design choice based upon conventional design considerations, such as to increase the rigidity of the receptacle or to reduce the cost of manufacture.

7. Claims 21, 22, 29 and 30 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 20 above, and further in view of Kloefer (6,425,626) or Jalomo (5,316,141). Ferguson further fails to show a connecting device such as a weld bead being located at least in part within the gap for connecting the first connecting portion to the second connecting portion. Kloefer teaches a connecting device such as a weld bead (82) located at least in part within the gap for connecting two elements (10, 12) together (Figures 4-5). Jalomo shows a receptacle comprising a weld bead (38, column 2, line 59) for connecting two wall elements together (Figure 5). It would have been obvious to one having ordinary skill in the art in view of Kloefer or Jalomo to modify the receptacle of Ferguson as modified so it includes a connecting device such as a weld bead disposed at least in part within the gap for connecting the first connecting portion to the second connecting portion for further securing the closed bottom of the receptacle. As to claims 29 and 30, Ferguson as modified discloses the

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weld bead for securing the first and second wall elements together which is considered equivalent to at least one stiffening rib formed of a bay configuration as claimed.

***Response to Arguments***

Applicant's arguments with respect to 12/14/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

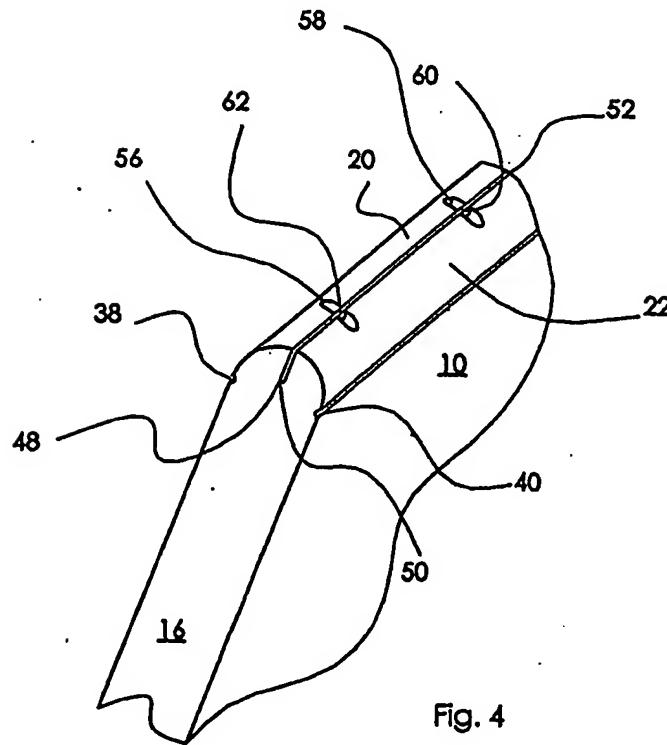
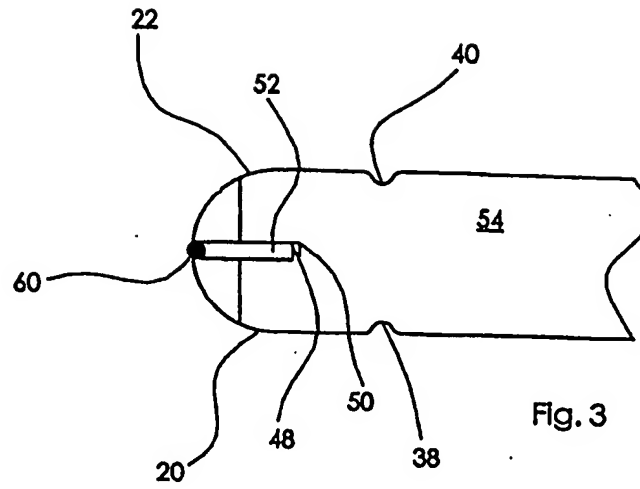
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb  
January 27, 2006



Luan K. Bui  
Primary Examiner  
Art Unit 3728





Do NOT ENTER LAB  
-1/27/06